

as garments and that contain spandex fibers, comprising contacting the textile with a perfume composition which is a mixture of fragrance materials, so that fragrance materials are deposited on the textile, wherein the perfume composition contains at least 50%, by weight of the perfume composition, of fragrance materials selected from:

A2  
Cont.

Category A) hydroxylic materials which are alcohols, phenols or salicylates, with an octanol/water partition coefficient (P) whose common logarithm ( $\log_{10}P$ ) is 2.5 or greater, and a gas chromatographic Kovats index (as determined on polydimethylsiloxane as non-polar stationary phase) of at least 1050, and

Category B) esters, ethers, nitriles, ketones or aldehydes, with an octanol/water partition coefficient (P) whose common logarithm ( $\log_{10}P$ ) is 2.5 or greater, and a gas chromatographic Kovats index (as determined on polydimethylsiloxane as non-polar stationary phase) of at least 1300.

---

#### REMARKS

Claims 1 to 11 are pending. Claims 1 and 8 were amended to clarify that "unworn fabrics" refers to textile goods that have never been worn as garments, as distinct from textiles that are not frayed. This language is supported at page 3, lines 11-12 of the present application. The scope of the pending claims are neither broadened nor narrowed by this clarifying amendment and no subject matter is added or surrendered. Applicants request reconsideration of the application as clarified.

#### The Invention

The present invention is based on the surprising discovery that, when treated with certain categories of perfumes, spandex-containing textiles behave differently from spandex-free textiles. When treated with fragrances specified in the present invention, spandex-containing textiles show enhanced deposition and retention of perfume after washing and an increased malodor reduction, as compared to spandex-free textiles.

Rejection of Claims 1-11 under 35 USC § 112, second paragraph

The Examiner rejected claims 1-11 under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicants regard as the invention. It is the Examiner's position that claims 1-11 are indefinite due to the use of the phrase "unworn fabric" in the preambles. Applicants have amended the claims to clarify that unworn refers to textile goods that have never been worn as compared to textile goods that are not frayed. The scope of the pending claims are neither broadened nor narrowed by this clarifying amendment and no subject matter is being added or surrendered. Support for the amendments is found in Applicants' specification at page 3, lines 11-12. Accordingly, this rejection should be withdrawn as to all pending claims.

The Examiner also rejected claims 1-11 under 35 U.S.C. § 112, second paragraph as being overly broad. It is the Examiner's position that the recitation of octanol/water partition coefficients and Kovats index values render the claims indefinite because they cover everything that may perform such functions. Applicants respectfully traverse this rejection as to all pending claims.

Octanol/water partition coefficients and Kovats indices are not functions, they are merely properties which further define the categories of fragrance materials recited in the claims. Analogous to melting points or boiling points, recitation of these physical properties specify the ingredients and not functions performed by the claimed invention. Accordingly, all rejections based on § 112, second paragraph, should be withdrawn as to all pending claims.

Rejection of Claims 1-11 under 35 USC § 103(a)

The Examiner rejected claims 1-11 under 35 U.S.C. § 103(a) as unpatentable over U.S. Patent No. 4,882,220 ("Ono") in view of U.S. Patent No. 5,008,517 ("Brekkestran"). Applicants respectfully traverse this rejection with respect to all pending claims.

It is the Examiner's position that Ono discloses the application of fragrances to fibrous structures, including two fragrances that fall within Category A' of Applicants' invention. The Examiner acknowledges that Ono does not teach the use of spandex but does refer to stretch fabrics. The Examiner maintains that one skilled in the art at the time Applicants' application was filed, would have been motivated to combine the fragrance application teachings of Ono with Brekkestran, a secondary reference that

teaches that incorporating spandex into a fibrous material may result in elastic qualities.

There is no motivation to combine Ono and Brekkestran in the manner suggested. Applicants note that the Examiner has not provided any reasons, beyond the teaching of Applicants' own disclosure, as to why an artisan of ordinary skill would be motivated to combine these two references. Further, the Examiner has not specified why there would be a reasonable expectation of success if the references were combined. The Examiner has not provided any explanation for how the combination of these two patents results in the claimed invention of the present application. For example, there is no indication how the combination would have led the skilled artisan to recognize the Categories of fragrances that are specifically useful on spandex-containing textiles as opposed to spandex-free textiles. MPEP § 2143. Accordingly, the rejection is improper as there is no basis for a *prima facie* case of obviousness. *In re Sang-Su Lee*, 277 F.3d 1338, 1343 (Fed. Cir. 2002) ("[A] showing of a suggestion, teaching, or motivation to combine the prior art references is an essential component of an obviousness holding.").

Assuming for the sake of argument that one skilled in the art to which the present invention pertains could somehow be motivated to combine the teachings of Ono and Brekkestran, such artisan still would not be in possession of the present invention as claimed. In fact, Ono teaches away from Applicants' invention in several respects. Ono requires that before being adhered to the textile, the fragrance is microencapsulated in "microcapsules composed of an external wall of a formaldehyde based resin enclosing a fragrant substance and a resinous binder" (col. 2, line 54-58, col. 2, lines 46-58; Figs. 2 and 3; claims 1 and 3). In stark contrast, the present invention does not require microencapsulation. Applicants discovered that perfume compositions may be applied directly to the spandex-containing textiles or may be applied in combination with other material in a conventional process (Applicants' specification pp. 6-7). Therefore, with respect to how the fragrance materials are applied, Ono's teaching and the present invention are inapposite.

Further, not only does Ono require microencapsulated fragrances, it teaches away from the direct application of fragrances to the textile because, according to Ono, such methods are "poor in durability of fragrance and very low in commercial value as the fragrance entirely vanishes by only one washing" (col. 1, lines 18-30). Once again, contrary to Ono's teachings and the accepted wisdom in the art, Applicants showed that spandex-containing textiles treated in accordance with the present invention have enhanced retention of perfume as well as enhanced deposition of perfume on textiles even after several washings (Ex. 2, pp. 26-28). Applicants submit that one skilled in the art reading Ono in its entirety, MPEP §

2141.02, would have been led away from the present invention. MPEP § 2145 ("A prior art reference that teaches away from the claimed invention is a significant factor in determining obviousness").

The secondary reference of Brekkestran, does not overcome the numerous gaps in Ono, or its contrary teachings. Brekkestran teaches the use of an electrically heated fabric assembly for an electrically heated garment wherein spandex is blended in the fabric assembly to provide stretchability (abstract, col. 2, lines 63-67, col. 3, lines 11-13). Brekkestran's use of spandex is only for the purpose of providing stretchability and does not concern the process of making fragranced fabrics (col. 3, lines 11-13). Even if the use of spandex is satisfied by the combination of Ono and Brekkestran, microcapsules with a formaldehyde based external wall and resinous binders, as per Ono, are still required in the combined references. Thus, even if one skilled in the art were motivated to combine Ono and Brekkestran, that artisan would not have been led to the present invention.


Applicants submit that none of the cited references, taken alone or in combination, make obvious the invention as presently claimed, and the application is in condition for allowance.

Should the Examiner have any questions or wish to discuss any aspect of the case, he is invited to contact Applicants' representative at the numbers noted below.

No fees are believed due. Nevertheless, should the Commissioner determine that any fee is due before the Examiner may consider this Amendment, including a fee for an extension of time, such extension is requested and the Commissioner is authorized to charge the fee to Deposit Account No. 04-1928.

In view of the foregoing, allowance of the above-referenced application is respectfully requested.

Respectfully submitted,



ROBERT B. FURR, JR.  
ATTORNEY FOR APPLICANTS  
REGISTRATION NO. 32,985  
TELEPHONE: (302) 892-7910  
FACSIMILE: (302) 892-7925

Dated: September 4, 2002

**VERSION WITH MARKINGS TO SHOW CHANGES MADE**

In showing the changes, deleted material is shown as a strikethrough, and inserted material is shown underlined.

**IN THE CLAIMS:**

1. A method of treating textile which is yarn or ~~[unworn fabric]~~ textile goods that have never been worn as garments and that contain~~ing~~ spandex fibers, comprising contacting the textile with a perfume composition which is a mixture of fragrance materials, so that fragrance materials are deposited on the textile, wherein the perfume composition contains at least 50%, by weight of the perfume composition, of fragrance materials selected from:

Category A) hydroxylic materials which are alcohols, phenols or salicylates, with an octanol/water partition coefficient (P) whose common logarithm ( $\log_{10}P$ ) is 2.5 or greater, and a gas chromatographic Kovats index (as determined on polydimethylsiloxane as non-polar stationary phase) of at least 1050, and

Category B) esters, ethers, nitriles, ketones or aldehydes, with an octanol/water partition coefficient (P) whose common logarithm ( $\log_{10}P$ ) is 2.5 or greater, and a gas chromatographic Kovats index (as determined on polydimethylsiloxane as non-polar stationary phase) of at least 1300.

8. (Amended) A textile which is yarn or ~~[unworn fabric]~~ textile goods that have never been worn as garments and that contain~~s~~ spandex fibers, comprising contacting the textile with a perfume composition which is a mixture of fragrance materials, so that fragrance materials are deposited on the textile, wherein the perfume composition contains at least 50%, by weight of the perfume composition, of fragrance materials selected from:

Category A) hydroxylic materials which are alcohols, phenols or salicylates, with an octanol/water partition coefficient (P) whose common logarithm ( $\log_{10}P$ ) is 2.5 Or greater, and a gas chromatographic Kovats index (as determined on polydimethylsiloxane as non-polar stationary phase) of at least 1050, and

Category B) esters, ethers, nitriles, ketones or aldehydes, with an octanol/water partition coefficient (P) whose common logarithm ( $\log_{10}P$ ) is 2.5 or greater, and a gas chromatographic Kovats index (as determined on polydimethylsiloxane as non-polar stationary phase) of at least 1300.